

If you wish to appear for oral argument, you must so notify the court and opposing counsel by 4:00 p.m. one court day before the hearing, pursuant to California Rules of Court, rule 3.1308. The court telephone number is (209) 533-6524.

Absent a request for oral argument, the tentative ruling will be adopted as final at the time set for hearing.

1. CV59736 Sandra Romena, et al. v. Marlett Berry, et al.

Motion: Change venue; attorney fees and costs
Moving party: Defendant Marlett Berry
Motion filed: September 8, 2016

Tentative ruling: The motion is GRANTED. Plaintiff's counsel shall pay Defendant's attorney fees and costs in the amount of \$1,685.

Comment

The Court has not considered Plaintiff's untimely filed opposition to the motion.

2. CV59885 California Department of Parks & Recreation v. Robert S. Giessman, et al.

Motion: Motion to compel re requests for production; request for monetary sanctions
Moving party: Plaintiff
Motion filed: September 9, 2016

Tentative ruling: The motion is GRANTED. Within 30 calendar days, each defendant (1) shall identify by Bates number which documents in the 11,391-page file he/she/it produced in response to the requests for production that are the subject of the instant motion, and, (2) for each document, shall identify to which of the 27 numbered requests the document is responsive. Defendants also shall, within that 30-day period, provide further written responses consistent with the analysis and comments below. Finally, Defendants shall pay a monetary sanction to Plaintiff in the amount of \$4,800.

Defendants' objections to Plaintiff's evidence in support of the instant motion, which were filed on September 30, 2016, are OVERRULED.

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Analysis and comments

The Court offers the following analysis and comments on some of the more than dozen arguments Defendants advanced as independent grounds in opposition to the motion:

- a. The assertion that Defendants have produced all documents in their possession, custody, or control is supported only by the declaration of their counsel, who cannot possibly have personal knowledge of the truth of this assertion. (See Opposition at p. 2, lines 20-22.)
- b. Defendants have presented no authority for their arguments that authenticated copies of the requests for production were required to have been submitted with the motion or that the separate statement filed pursuant to California Rules of Court, rule 3.1345 was required to have been made under penalty of perjury. These arguments imply that Plaintiff has not accurately presented the requests at issue. If specific parts of the separate statement are objectionable, Defendants are requested to be clear about the grounds for objection rather than implying a procedural violation has resulted in the presentation of false evidence to the Court.
- c. The Court is unpersuaded by Defendants' various arguments related to alleged deficiencies in the proofs of service of the requests for production. Contrary to what Defendants seem to argue, Code of Civil Procedure section 1013, subdivision (c) does not require a proof of service by overnight delivery to contain the additional language quoted and referenced by Defendants. (See Opposition at p. 7, lines 6-21.) Moreover, in mis-citing section 9:85.2 of the Rutter Group's California Practice Guide: Civil Procedure Before Trial, Defendants appear to have confused the requirements for personal service with those for service by overnight delivery. (See Opposition at p. 6, lines 16-23.) As to the larger issue of service, the Court cannot believe the implication that Defendants were not served with the instant discovery requests given the evidence of months of correspondence about them and of Defendants' attempts, however inadequate, to respond to them.
- d. The Court rejects Defendants' argument that Plaintiff is precluded from obtaining relief through the instant motion solely on the ground that Plaintiff is alleged to have miscalculated the original deadline for production—in March 2016—by a single day. Defendants do not dispute they have been given multiple extensions of time for production since then, not producing any documents until the end of July 2016, more than four months later. This ground for opposition is frivolous.

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- e. The Court rejects Defendants' argument that the second three sets of discovery requests were invalid because they were served prematurely. Plaintiff has presented uncontested evidence that it served the requests at the invitation of and in reliance on an agreement with Defendants' counsel.
- f. In their argument that the instant motion is time-barred, Defendants' reliance on a letter from their counsel dated July 29, 2016, that purportedly proposed an extension of time to file the motion to September 14, 2016, is misleading. (Opposition at p. 10, lines 17-22.) Plaintiff submitted as evidence in support of the instant motion a letter from Defendants' counsel bearing that date that contains all of language quoted by Defendants but does not include the crucial phrase "or until September 14, 2016." (See p. 4 of exhibit Q to Declaration of Jeremy Brown filed on September 9, 2016.) Defendants appear to have falsely represented that such date appeared in the July 29 correspondence in order to defeat the instant motion.
- g. Defendants' contention that Plaintiff's separate statement does not comply with the requirements of California Rules of Court, rule 3.1345, subdivision (d) is not supported by the record. The separate statement organizes and clearly labels the requests, responses, and associated arguments by number.
- h. The Court agrees with Plaintiff that the vast majority of Defendants' objections to the requests for production appear to consist of boilerplate language that reflect unjustified lack of cooperation and evasiveness in the discovery process. While Plaintiff could have been clearer about its capitalization conventions with respect to the defined terms, any alleged uncertainty on the part of Defendants could have been easily resolved through brief correspondence with Plaintiff's counsel; indeed, Plaintiff's counsel appears to have offered such written clarification after reviewing Defendants' objections. Defendants' objections to the allegedly compound requests are rejected, as are the objections to the definition of the term "DOCUMENT" as "embracing too many categories to have meaning" and the objections to the phrase "related to the fire that occurred on December 31, 2012" as vague, ambiguous, and unintelligible. The Court notes that clearly inapplicable objections have been asserted to some requests, such as fire-related objections to general requests about corporate and property ownership and management. Finally, Defendants have not adequately justified their sweeping objections based on their alleged rights to financial privacy.

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- i. Defendants appear to have misused the term “electronically stored information” (ESI) and thus misapplied the statutes governing ESI. The evidence suggests that the documents produced were predominantly, if not entirely, physical papers that were converted to electronic documents by Defendants’ counsel for purposes of this litigation rather than “information that is stored in an electronic medium.” (Code Civ. Proc., § 2016.020, subd. (e).)
- j. The Court rejects Defendants’ argument that Plaintiff failed to meet and confer on the issues presented by the instant motion prior to filing it. Defendants’ assertion that they had only four business days to respond after the issues were raised for the first time in a letter dated August 26, 2016, is contradicted by the evidence. Plaintiff has submitted correspondence dated July 11, 2016, and July 28, 2016, which raise the issues in detail. Plaintiff also has submitted evidence that Defendants’ counsel acknowledged receipt of this correspondence on the same day it was transmitted, requested an opportunity to resolve the issues without a motion to compel, and responded to some of the issues in writing. In fact, there is evidence Defendants’ own engagement in a written meet-and-confer process on these issues began no later than July 29, 2016, which is nearly a full month prior to when Defendants claim in their opposition that Plaintiff first raised them. (See exhibits J-L, N, and P-Q to Declaration of Jeremy Brown filed on September 9, 2016.)
- k. The Court disagrees with Defendants’ argument that Plaintiff’s request for discovery sanctions was improperly noticed. The notice of motion filed on September 9, 2016, clearly states Plaintiff’s statutory bases for seeking monetary sanctions in the amount of \$17,400 against Defendants. (See Notice of Motion at p. 2, lines 16-19.)
- l. Defendants’ argument that Plaintiff cannot receive an award of attorney fees as part of a monetary discovery sanction in the absence of evidence that Plaintiff has paid or is obligated to pay its counsel the hourly rate sought is directly contrary to clearly established case law. The Court’s award uses the lodestar method. The figure sought by Plaintiff has been reduced to reflect what the Court deems would have been a reasonable amount of time spent on the instant motion at a reasonable hourly rate in Tuolumne County, where the controversy occurred. The Court deems \$250.00 as a reasonable hourly rate under the circumstances.

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In addition, for purposes of future motions, Plaintiff is reminded to comply with California Rules of Court, rule 3.1110, subdivision (f), which requires adequate separators between exhibits and an index to exhibits. Plaintiff did not comply with these requirements in filing the supporting declaration of its counsel on September 9, 2016, which was excess of 400 pages and appears to have included at least 25 exhibits. Plaintiff also is reminded that reply briefs in civil law and motion matters generally are due at least five court days prior to the hearing and to check the calendar of court holidays when calculating filing deadlines, as its reply brief and related papers were filed one day late.

3. CV60114 Donald Jageman v. Sonora Community Hospital, et al.

Motion: Demurrer to Plaintiff's first amended complaint
Moving parties: Defendants Sonora Regional Medical Center, Adventist Health, and
 Jolene Andrews
Motion filed: September 8, 2016

Tentative ruling: This matter will be CONTINUED to November 4, 2016, at 8:30 a.m. in order to allow time for the required meet-and-confer process to take place. If the issues raised by the demurrer will be resolved through the filing of a second amended complaint, the second amended complaint shall be filed or the Court otherwise shall be notified by the parties no later than October 24, 2016, so that this matter may be timely removed from calendar.

Analysis

In Plaintiff's declaration filed on September 29, 2016, in support of his opposition to the demurrer, he asserts that he did not receive any letter, e-mail, or fax from Defendants' counsel as part of the meet-and-confer process required by Code of Civil Procedure section 430.41. The parties are encouraged to ensure they have correct contact information for purposes of future meet-and-confer processes. In addition, the Court notes that the statute requires the meet-and-confer process to take place in person or by phone (see Code Civ. Proc., § 430.41, subd. (a)), notwithstanding any written correspondence that may be exchanged to facilitate the process.